

NHDES Wetlands Program Rulemaking & Process Improvement Effort

2014 Spring Listening Session – Keene

April 1, 2014

Comments from Participants

- "Important Resources" might be important on a "local" scale, even if not at the regional or state level, - how can the process account for "locally-important" resources? what assessment of functions and values accounts for local factors?
- Applicants should be able to do their initial review with DHR on-line - inefficient to have to travel to Concord offices
- Be clear and consider FEMA requirements on what activities are allowed during an emergencies, versus what is allowed under recovery (especially with respect to bank stabilization)
- Be clear on the definition of "activity," e.g., permanent disturbance of the land or wetland (see Keene's definition in their wetland ordinance) - they found it is critical to have precise definitions of terms
- Better account for and allow for management of stormwater quantity and flood prevention
- Can DES encourage (require?) local review and input prior to submission to state for a permit. Several municipalities have had projects work with the state for months in advance of bringing anything to the local boards for review/input.
- Can there be a differentiation between new "development" and "maintenance" activities - especially with respect to maintain "green infrastructure" used for stormwater management
- Clarify how to address existing invasives - which may actually be performing well in terms of providing bank stabilization or supporting bees. There should be more consistency in treatment recommendations (e.g., mechanical removal versus chemical treatment)
- Clarify jurisdiction and definition of a "wetland" - people now don't understand that a streams and rivers are included
- Clarify requirements/allowances for fire ponds - especially older fire ponds that have not "formally designated" or have not "been maintained" - when can they be dredged? what is considered "not maintained?"
- Consider a low threshold where no permit or notification is required (e.g., projects with < some minimum # sq ft) - but need safeguards to avoid significant cumulative impacts from multiple sequential "deminimis" projects
- Consider if a plan includes a stormwater management plan (SWPP) allowing future maintenance without any additional review or permitting by DES when done according to the SWPP

- Could increase compliance levels by increasing fines (like OSHA). For example, consider allowing for less regulatory oversight of maintenance activities with requirements for when professional input (e.g., wetlands scientist, engineer) is required, with heavy fines if those procedures are followed
- Designs should better consider the context of a project and the relative functions and value of the wetlands & resources - apply a "context-sensitive" design approach and better consider indirect impacts
- Encourage buffers around vernal pools to maintain value of those resources
- Ensure that BMP manuals adequately protect wetland resources
- Evaluate appropriateness of buffers (e.g., size) in urban versus rural areas
- Make it clearer to applicants, earlier in the application process, that a sign-off or review by the local conservation commission is needed
- Make permitting easier and quicker for maintenance activities (e.g., maintenance of existing structures)
- More is needed for oversight and enforcement of timber harvesting activities - seeing lots of run-off and siltation to neighboring resources (streams, roadways, ponds, land) from large cut areas
- Need to do more site visits and enforcement of notification projects - especially if going to do more projects under permit-by-notification
- Pre-application review would help applicants to know what other agencies and issues might be involved with a project - suggest it be like the NHDOT Resource Agency monthly meeting for early conceptual-level conversations on transportation-related projects
- Provide a guide for municipal boards (planning board, zoning board, conservation commission) on how to review a wetlands application and associated proposed project. give more weight to local input (particularly from conservation commission)
- provide for on-line permitting for notifications
- See a potential issue where an applicant has a pre-application meeting with the state without conferring with local regulators - can DES provide notice to the municipality at the pre-application phase? can DES require a local conference to occur?
- Take time necessary to get the rule "right" - don't rush just to get them done per the schedule!
- Target people doing design work under the PE for the developer/landowner to increase consideration of wetlands avoidance and minimization during the initial design process (now wetlands impacts are dealt with as an afterthought)
- There should be more information and explanation associated with an "after-the-fact" permit application - some applicants see the ATF approach as a cost of doing business (applicant gets what they want and pays a fee for an ATF if they get caught)
- There should be variable mitigation requirements - especially for clean-out of man-made structures (e.g., green infrastructure stormwater management systems) versus natural systems
- Would the prohibited activities have an appeal process?

